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CIVIL OFFICE
MIDDLESEX COUNTY

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
MIDDLESEX COUNTY
DOCKET NO. MID-C- 242 -12

JEFFREY S. CHIESA, Attorney General of the
State of New Jersey, and ERIC T. KANEFSKY,
Acting Director of the New Jersey Division of
Consumer Affairs,

Plaintiffs,

v.

SHIV SHIVAM INC. d/b/a LUKOIL; JANE
AND JOHN DOES 1-10, individually and as
owners, officers, directors, shareholders,
founders, managers, agents, servants, employees,
representatives and/or independent contractors of
SHIV SHIVAM INC. d/b/a LUKOIL; and XYZ
CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with

offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. During emergencies and major disasters, such as hurricanes, tropical storms, earthquakes, fires and floods, some merchants have taken unfair advantage of consumers by greatly increasing prices for certain merchandise, which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain the life health or safety or comfort of persons or their property, a practice commonly known as "price gouging." When a declared state of emergency results in an abnormal disruptions of the market, the New Jersey Legislature has found it in the public interest that excessive and unjustified price increases in the sale of certain merchandise, price gouging, be prohibited. See N.J.S.A. 56:8-107 and N.J.S.A. 56:8-109.

2. On October 27, 2012, just prior to Tropical Storm Sandy ("Sandy") reaching the State of New Jersey ("State" or "New Jersey"), Governor Chris Christie ("Governor Christie") declared a State of Emergency ("State of Emergency"). In the wake of the State of Emergency and Sandy, defendant Shiv Shivam Inc. d/b/a LUKOIL ("Shiv Shivam" or "Defendant") engaged in price gouging in the sale of motor fuel. In so doing, Shiv Shivam has committed numerous violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA").

PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA. The Director is charged with the responsibility of administering the CFA on behalf of the Attorney General.

4. By this action, the Attorney General and Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and/or 56:8-19. Venue is proper in Middlesex County, pursuant to R. 4:3-2, because it is the county in which Shiv Shivam has conducted business.

5. On August 23, 2005, Shiv Shivam was established as a domestic profit corporation in the State. Upon information and belief, at all relevant times, Shiv Shivam has maintained a business address of 152 Old New Brunswick Road, Piscataway, New Jersey 08854. Shiv Shivam's registered agent is Girish N. Patel, who maintains a mailing address of 114 Kamp Place, North Bergen, New Jersey 07047.

6. John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, and/or representatives of Shiv Shivam who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

7. XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS:

A. Sandy and Executive Order No. 104 Declaring a State of Emergency

8. In late October 2012, Sandy was approaching New Jersey.
9. Hurricanes and tropical storms have the potential to cause severe weather conditions, including heavy rains, high winds, main stream and river flooding, and progressing runoff that may threaten homes and other structures, and endanger lives in the State.
10. On October 27, 2012, at approximately 11:30 a.m., due to the approach of Sandy, Governor Christie issued Executive Order No. 104, which immediately declared a State of Emergency in New Jersey.
11. Upon information and belief, on October 28, 2012, President Obama signed an emergency disaster declaration for New Jersey.
12. Upon information and belief, Governor Christie ordered the evacuation of all New Jersey barrier islands by 4:00 p.m. on October 28, 2012.
13. Upon information and belief, on October 29, 2012, Sandy made landfall in New Jersey and resulted in severe weather conditions of an unprecedented magnitude, including enormous storm surges, devastating winds and widespread flooding throughout the State.
14. Upon information and belief, while moving ashore at Atlantic City, Sandy brought winds in excess of 80 miles per hour, and heavy rainfall that reached almost 12 inches.
15. Sandy resulted in severe wind and water damage, among other things, to the New Jersey shoreline, homes and businesses. Residents were forced to evacuate their homes which, in many instances, were completely destroyed.

16. Sandy produced winds that toppled trees and downed power lines throughout New Jersey, causing widespread power outages that affected at least 2.4 million households and countless businesses.

17. Upon information and belief, at least thirty-four (34) New Jersey residents have died as a result of Sandy.

18. As a result of the power outages caused by Sandy, many New Jersey residents resorted to the use of generators that were powered by gasoline.

19. The widespread flooding and power outages forced the closure of motor fuel retailers in the State as well as prevented fuel deliveries to many of those retailers as well as retailers who otherwise could have been open for business. Such resulted in widespread and lingering shortages of motor fuel.

20. This situation left many New Jersey residents without an available source of motor fuel not only for transportation but also for other essential services, such as the operation of generators. Those New Jersey residents who were fortunate enough to find a retailer that was open and had fuel were forced to wait in line for several hours in lines that stretched for blocks.

21. On November 5, 2012, Governor Christie issued Executive Order No. 108 which declared that a limited state of energy emergency with regard to the supply of motor fuel exists in Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Monmouth, Passaic, Somerset, Sussex, Union and Warren Counties and implemented an odd-even gas rationing system. This system remained in place until 6:00 a.m. on November 13, 2012.

22. Upon information and belief, deliveries of motor fuel to retailers in the State did not resume until several days following Sandy.

B. Defendant's Business Generally

23. Upon information and belief, at all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of motor fuel to consumers.

24. At all relevant times, Defendant received deliveries of motor fuel, specifically gasoline and diesel fuel, from Lukoil North America LLC ("Lukoil").

25. At all relevant times, Defendant paid Lukoil a per-gallon rate for motor fuel.

26. At all relevant times, Defendant received from Lukoil and advertised, offered for sale and/or sold to consumers unleaded 87 octane gasoline, commonly known as "regular gasoline" ("Regular Gasoline").

27. On October 23, 2012, Defendant received a shipment of Regular Gasoline from Lukoil. The price per gallon Defendant paid was \$3.489 for Regular Gasoline.

28. On November 2, 2012, Defendant received a shipment of Regular Gasoline from Lukoil. The price per gallon Defendant paid was \$3.559 for Regular Gasoline.

29. At all relevant times, Defendant advertised, offered for sale and/or sold motor fuel to consumers at a per-gallon rate higher than the rate paid to Lukoil.

C. Defendant's Excessive Prices For Regular Gasoline

30. Shown below is a chart of the relevant prices Defendant paid to Lukoil for Regular Gasoline, and the prices at which it advertised, offered for sale and/or sold Regular Gasoline to consumers:

Date	Price Paid to Supplier	Cash Price For Consumers	Credit Card Price For Consumers
October 23, 2012	\$3.489	\$3.899	\$3.999
October 24, 2012	--	\$3.899	\$3.999
October 25, 2012	--	\$3.799	\$3.899
October 26, 2012	--	\$3.799	\$3.899
State of Emergency Declared			
October 27, 2012	--	\$3.799	\$3.899
October 28, 2012	--	\$3.799	\$3.899
October 29, 2012	--	--	--
October 30, 2012	--	--	--
October 31, 2012	--	--	--
November 1, 2012	--	--	--
November 2, 2012	\$3.559	\$4.499	--

31. Thus, as demonstrated above, Defendant increased the price of Regular Gasoline on November 2, 2012, to \$4.499 per gallon (cash), which represents an increase of .70¢ per gallon, or approximately 18% over the price being charged immediately prior to the State of Emergency on October 26, 2012.

32. Further, from October 23, 2012, immediately prior to the State of Emergency, to November 2, 2012, after the State of Emergency had been declared and Sandy made landfall in New Jersey, Defendant's markup for Regular Gasoline purchased with cash rose from 8.9% to 26.4%, which is an increase of 17.5%.

33. Upon information and belief, on November 2, 2012, Defendant made about 812 sales of Regular Gasoline to consumers.

D. Consumer Complaints As to Defendant

34. The Division of Consumer Affairs ("Division") has received approximately sixteen consumer complaints regarding excessive prices being charged to consumers for Regular Gasoline. Eight consumers reportedly purchased Regular Gasoline at \$4.49 a gallon. Of these

consumers, six stated that they recalled that Defendant was charging about \$3.79 to \$3.99 per gallon for Regular Gasoline immediately prior to Sandy.

35. On November 13, 2012, Shiv Shivam with served with an Administrative Subpoena Duces Tecum ("subpoena") demanding the production of documents reflecting any increased costs to justify these price increases to consumers for Regular Gasoline. Notwithstanding its having been given the opportunity to do so, Shiv Shivam has not produced any documents justifying the increase.

COUNT I

VIOLATION OF THE CFA (N.J.S.A. 56:8-109) BY DEFENDANT (EXCESSIVE PRICES DURING EMERGENCIES)

36. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 35 as if more fully set forth herein.

37. The CFA defines "merchandise" as including "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale." N.J.S.A. 56:8-1(c).

38. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically motor fuel.

39. The CFA states:

It shall be an unlawful practice for any person to sell or offer to sell during a state of emergency or within 30 days of the termination of a state of emergency, in the area for which the state of emergency has been declared, any merchandise which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of

person or their property for a price that constitutes an excessive price increase.

[N.J.S.A. 56:8-109.]

40. At all relevant times, Defendant has been engaged in the advertisement, offering for sale and/or sale of merchandise consumed or used as a direct result of an emergency and/or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of person or their property within the meaning of N.J.S.A. 56:8-109, specifically motor fuel.

41. An "excessive price increase" means:

A price that is excessive as compared to the price at which the consumer good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency. A price shall be deemed excessive if:

(1) The price exceeds by more than 10 percent the price at which the good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency, unless the price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of emergency.

(2) In situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or services during the state of emergency, the price presents an increase of more than 10 percent in the amount of markup from cost, compared to the markup customarily applied by the seller in the usual course of business immediately prior to the state of emergency.

[N.J.S.A. 56:8-108]

42. On November 2, 2012, after Sandy made landfall in New Jersey and within thirty (30) days after the State of Emergency had been declared, Defendant sold Regular Gasoline at

prices more than 10 percent higher than on October 26, 2012, immediately prior to the State of Emergency, which constitutes an excessive price increase.

43. Accounting for Defendant's costs, from October 23, 2012, to November 2, 2012, after Sandy made landfall in New Jersey and within thirty (30) days after the State of Emergency had been declared, Defendant's markup for Regular Gasoline was more than 10 percent higher than Defendant's markup for those fuels on October 26, 2012, immediately prior to the State of Emergency, which constitutes an excessive price increase.

44. By offering for sale and/or selling motor fuel, specifically Regular Gasoline on November 2, 2012, at prices constituting an excessive price increase compared to Defendant's prices on October 26, 2012, immediately prior to the State of Emergency, Defendant has engaged in unlawful practices in violation of the CFA, specifically N.J.S.A. 56:8-109.

45. Each instance of Defendant offering for sale and/or selling motor fuel at a price constituting an excessive price increase constitutes a separate violation of the CFA, N.J.S.A. 56:8-109.

COUNT II

VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)

46. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 35 as if more fully set forth herein.

47. The CFA prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or

real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...

[N.J.S.A. 56:8-2.]

48. In the operation of its business, Defendant has engaged in the use of unconscionable commercial practices.

49. Defendant has engaged in unconscionable commercial practices including, but not limited to, the following:

- a. Advertising, offering for sale and/or selling motor fuel, specifically Regular Gasoline on November 2, 2012, at prices constituting an excessive price increase compared to Defendant's prices on October 26, 2012, immediately prior to the State of Emergency.

50. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts of Defendant constitute multiple violations of the CFA;
- (b) Permanently enjoining Defendant, along with its agents, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under his control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA;
- (c) Directing Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Directing Defendant to pay the maximum statutory civil penalties for each violation of the CFA, in accordance with N.J.S.A. 56:8-13;

- (e) Directing Defendant to pay costs and fees, including attorneys' fees, for the use of the State, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Lorena Salzmänn
Lorena Salzmänn
Deputy Attorney General

By: Lindsay Puteska
Lindsay Puteska
Deputy Attorney General

Dated: November 26, 2012

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA, is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Lorena Salzmänn
Lorena Salzmänn
Deputy Attorney General

By: Lindsay Puteska
Lindsay Puteska
Deputy Attorney General

Dated: November 26, 2012

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Lorena Salzmänn
Lorena Salzmänn
Deputy Attorney General

By: Lindsay Puteska
Lindsay Puteska
Deputy Attorney General

Dated: November 26, 2012

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorneys General Lorena Salzmänn and Lindsay Puteska are hereby designated as trial counsel for the Plaintiffs in this action.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

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Deputy Attorney General

By: Lindsay Puteska
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Dated: November 26, 2012